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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/30/2003

Eduardo Jimenez

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EXAMINER

GUIDOTTI, LAURA COLE

ART UNIT

PAPER NUMBER

3727

MAIL DATE

DELIVERY MODE

07/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/697,213	Applicant(s) JIMENEZ ET AL.	
	Examiner Laura C. Guidotti	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45,48,49,77,79-81 and 88-99 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45,48,49,77,79-81,88 and 89 is/are allowed.
- 6) ☒ Claim(s) 90,92-95 and 97 is/are rejected.
- 7) ☒ Claim(s) 91,96,98 and 99 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 March 2009 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 90 and 92-95 are rejected under 35 U.S.C. 102(b) as being anticipated by Halm, US 5,651,158.

Halm discloses a handle (43), a head connected to the handle (41, see Figures 4A-4F) and having a front side and a rear side (upper and lower sides respectively as oriented in Figures 4C-4E), an upstanding wall that forms a peripheral frame (42) that circumferentially surrounds a central opening (where 44, 45, 48, and 49 are located in Figure 4B), a platform positioned within the central opening (44) so that the platform is separated from the upstanding wall by an annular gap (gap is region between frame 42 and carriers 44, see Figures 4A, 4B, 4F), a resilient material positioned in at least a

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portion of the annular gap that flexibly attaches the platform to the upstanding wall (49), a first group of cleaning elements fixedly mounted to and extending from the upstanding wall (47), a second group of cleaning elements fixedly mounted to and extending from the platform (46), the first and second groups of cleaning elements extending outward from the front side of the head (Figures 4C-4E), and wherein upon a user contacting one or more teeth with the first and second groups of cleaning elements and applying pressure, the resilient material flexes and the platform moves toward the rear side of the head (as shown in Figure 4D), allowing the first group of cleaning elements to contact areas of the teeth located further from the head (Column 5 Lines 27-32). Regarding claim 92, the resilient material is a flexible elastomeric material (Column 5 Lines 23-26). Regarding claim 93, the resilient material (49) is considered to be a membrane or webbing. Regarding claim 94, the handle further comprises a neck (unlabeled region shown in Figure 4A between handle 43 and head 41), the upstanding wall being non-movable with respect to the neck (see Figures 4A-4D). Regarding claim 95, the first group of cleaning elements circumferentially surround the central opening (see Figures 4A-4F).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claim 97 is rejected under 35 U.S.C. 103(a) as being unpatentable over Halm, US 5,651,158 in view of Hafliger et al., US 6,802,097.

Halm discloses all elements previously mentioned above, however does not disclose that the toothbrush further comprises a mechanical vibratory device.

Hafliger et al. teach a toothbrush that comprises a mechanical vibratory device (10) mounted in a toothbrush neck (Figures 1-3) so that a toothbrush has improved cleaning action over a manual toothbrush (Column 1 Lines 16-47).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the neck and handle of Halm to further include a mechanical vibratory device, as Hafliger et al. teach, so that the toothbrush has improved cleaning capabilities.

Allowable Subject Matter

4. Claims 45, 48-49, 77, 79-81, and 88-89 are allowed.

5. Claims 91, 96, and 98-99 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter:

None of the prior art made of record discloses a toothbrush comprising a handle, neck, a head having a rigid portion with first and second surfaces, and a movable portion having first and second surfaces, wherein the rigid portion is non-movable relative to the neck and wherein the movable portion is movable relative to the neck, a

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mechanical vibratory device, wherein the rigid portion comprises a plurality of first cleaning elements extending from the first surface of the rigid portion, the rigid portion being an upstanding wall that creates a peripheral frame having a central opening, wherein the movable portion comprises a plurality of second cleaning elements extending from the first surface of the movable portion that are fixedly mounted to the movable portion, the movable portion located within the central opening, an annular gap in the head positioned between the rigid portion and the movable portion, a resilient membrane for flexibly attaching the movable portion to the rigid portion, the membrane positioned in part of the gap, and a plurality of third cleaning elements, each third cleaning element mounted on the resilient membrane and connected to both the rigid portion and the movable portion, wherein no portion of any of the third cleaning elements extends outwardly beyond the second surfaces of the movable and rigid portions under any condition.

US 6,442,786 to Halm et al. disclose a toothbrush comprising many limitations of the toothbrush claimed in the present application, however the rigid portion is not an upstanding wall that creates a peripheral frame having a central opening. US 5,651,158 to Halm also discloses a toothbrush, however Halm does not disclose a plurality of third cleaning elements, wherein each of the third cleaning elements are mounted on the resilient membrane.

The Examiner is also citing US 7,020,928 to Hohlbein which is drawn to a very similar toothbrush to that of the one claimed in the present application. Hohlbein does has a filing date after the filing date of this application.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Guidotti whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Wednesday, 6am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura C Guidotti/
Primary Examiner, Art Unit 3727

lcg